IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 92 OF 1989

The Commissioner of Income-tax,
Bombay City-III, Bombay. ...Applicant
V/s.
Shri Jatin alias Rajesh Khanna. ...Respondent

Mr.Parag Vyas for Applicant.
None for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.

DATED : JULY 1, 2005.

P.C. :-

. This is the reference at the instance of the Revenue under Section 256(1) of the Income Tax Act, 1961 seeking the opinion of this Court on the following question. The assessment year in question is 1975-76 :-

> "Whether, on the facts and in the circumstances of this case, and having regard to the provisions of section 140A(3) as it stood on 1.4.1975, the Tribunal was justified in holding that the default of the assesse in not paying the self assessment tax was not a continuous one but was a single default which was complete at

the end of the month after the filing of the return? "

2. While dealing with the above question when it was raised before the Tribunal, the Tribunal observed as under :-

"2.7. Coming to the rate of penalty, we are unable to accept the stand taken by the Income-tax Officer that penalty should be levied till 1.4.1976 according to sub-section(3) of section 140A prior to its amendment and that thereafter the penalty should be levied according to the sub-section as amended with effect from 1.4.1976. It has been held by the Supreme Court in CIT Vs. Suresh Seth (129 ITR 328) that the law applicable with regard to the levy of penalty for not filing the return on due date is the law which was in force on the last date on which the return had to be filed. It was also held that in such cases, there is only a single default which is complete but whose

effect may continue to be felt even after its completion and that there cannot be said to be a continuing wrong or default. The principle is applicable to the present case. The default was complete when the assessee failed to pay the tax on the income returned within one month of 30.1.1976. The penalty should, therefore, be according to the law as it stood at that time and the continuing period of default has to be reckoned only as a multiplier for determining the amount of penalty. Taking all the circumstances into consideration, we would fix the penalty at 12% per annum for the period of default."

3. The above view of the Tribunal is based on the judgment of the Apex Court in the case of **Commissioner of Wealth-Tax, Amritsar V.s. Suresh Seth (1981) 129 ITR Page 129.** The Apex Court in this Judgment has dealt with the interpretation of Section 18 of the Wealth Tax Act which was holding the field at the relevant time, which is identical with Section 140-A(3) of the Income

Tax Act. The interpretation put by the Apex Court on the provision of Section 18 of the Wealth Tax Act, therefore, becomes relevant for interpreting the provision of Section 140-A(3) of the Income Tax Act. Let us see what interpretation has been put by Apex Court on the provision of Section 18 of the Wealth Tax Act. Apex Court ruled as under :-

> "Section 18 of the Act, with which we are concerned in this case, however, does not require the assessee to file a return during every month after the last day to file it is over. Non-performance of any of the acts mentioned in s.18(1)(a) of the Act gives rise to a single default and to a single penalty, the measure of which, however, is geared up to the time lag between the last date on which the return has to be filed and the date on which it is filed. The default, if any committed, is committed on the last date allowed to file the return. The default cannot be one committed every month thereafter. The words "for every

> month during which the default continued" indicate only the multiplier to be adopted in determining the quantum of penalty and do not have the effect of making the default in question a continuing one. Nor do they make the amended provisions modifying the penalty applicable to earlier defaults in the absence of necessary provisions in the amending Acts. The principle underlying section 6 of the General Clauses Act is clearly applicable to these cases. It may be stated here that the majority of the High Courts in India have also taken the same view.

Apex Court in the result held as under :-

> "In the result, we hold that where the default complained of is one falling under s.18(1)(a) of the Act, the penalty has to be computed in accordance with law in force on the last day on which the return in question had to be filed. Neither the amendment made in 1964 nor the

amendment made in 1969 has retrospective effect.

4. The Tribunal, in our view, was, thus, justified in taking the view; quoted in para 2 (supra); relying on the Apex Court Judgement referred hereinabove in the case of of **Commissioner of Wealth-Tax, Amritsar V.s. Suresh Seth (1981) 129 ITR Page 129** in which it has held that the default by the assessee in not paying the self assessment tax was not a continuous one but was a single default which was complete at the end of the month after the filing of the return. We reiterate the view taken by the Tribunal and following the Judgment of the Apex Court referred to hereinabove for the reasons recorded therein, answer the question in affirmative i.e. in favour of the Assessee and against the Revenue with no order as to costs.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**